



**TOURO COLLEGE**  
**JACOB D. FUCHSBERG LAW CENTER**  
*Where Knowledge and Values Meet*

## Touro Law Review

---

Volume 9 | Number 3

Article 22

---

1993

### Equal Protection

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Civil Law Commons](#), [Constitutional Law Commons](#), [Courts Commons](#), and the [State and Local Government Law Commons](#)

---

#### Recommended Citation

(1993) "Equal Protection," *Touro Law Review*. Vol. 9 : No. 3 , Article 22.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol9/iss3/22>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

"[b]ecause . . . [it] involves economic and social welfare concern . . . ." <sup>354</sup>

## SUPREME COURT, APPELLATE DIVISION

### SECOND DEPARTMENT

Gruen v. County of Suffolk <sup>355</sup>  
(decided November 16, 1992)

Plaintiff challenged the constitutionality of a Suffolk County resolution that reduced accumulated sick pay benefits of managerial county employees, claiming, *inter alia*, that it violated his right to equal protection under the state <sup>356</sup> and federal <sup>357</sup> constitutions. <sup>358</sup> The defendant contended that the complaint should be dismissed because the controversy was not justiciable <sup>359</sup> and failed to state a cause of action. <sup>360</sup> The appellate division held that the complaint did not implicate the political question doctrine, <sup>361</sup> and that it adequately set forth a cause of action alleging denial of equal protection. <sup>362</sup>

The County, by Suffolk County Resolution No. 659-1988, reduced the amount of unused sick time payable to Suffolk Association of Managerial Employees (SAME) members earning over \$40,000 per year by fifty percent. <sup>363</sup> The plaintiff alleged

---

354. *Id.* at 427, 605 N.E.2d at 344, 590 N.Y.S.2d at 856.

355. 590 N.Y.S.2d 217 (2d Dep't 1992).

356. N.Y. CONST. art. I, § 11.

357. U.S. CONST. amend. XIV, § 1.

358. *Gruen*, 590 N.Y.S.2d at 218-19.

359. *Gruen*, 590 N.Y.S.2d at 219; *see* N.Y. CIV. PRAC. L. & R. 3211(a)(1) (McKinney 1992 & Supp 1993).

360. *Gruen*, 590 N.Y.S.2d at 219; *see* N.Y. CIV. PRAC. L. & R. 3211(a)(7) (McKinney 1992 & Supp 1993).

361. *Gruen*, 590 N.Y.S.2d at 219.

362. *Id.*

363. *Id.* at 218. The resolution reduced the rate of paid sick days from one day paid for each two days accrued not to exceed 180 days paid per 360 days accrued, to one day paid for every four days accrued for a total of 90 days paid per 360 days accrued. *Id.*

that the SAME members, although not covered by a collective bargaining agreement,<sup>364</sup> are otherwise similarly situated to employees covered under collective bargaining agreements, because they are graded the same way and receive the same salaries.<sup>365</sup> The plaintiff alleged that the resolution treated similarly situated persons differently, by arbitrarily selecting SAME members for the benefit reduction, and, also, selecting only those SAME members earning over \$40,000 a year.<sup>366</sup>

The court affirmed the lower court's determination that the case presented a justiciable issue, and did not implicate the political question doctrine.<sup>367</sup> The court noted that the plaintiff did not attack the County's right to allocate resources or to establish compensation, but, instead, challenged that, in allocating resources and establishing compensation, the County created a classification that violated equal protection principles by impermissibly discriminating against a particular class.<sup>368</sup>

The court noted that the foundation for an equal protection claim is the same under both the state<sup>369</sup> and federal<sup>370</sup> constitutions. The court stated that in order for a plaintiff to properly plead an equal protection violation, he or she must allege that the challenged governmental classification is wholly irrelevant to the achievement of a legitimate state objective,<sup>371</sup> and the classifica-

364. *Id.*

365. *Id.* at 220.

366. *Id.*

367. *Id.* at 219; *see also* *Boung Jae Jang v. Brown*, 161 A.D.2d 49, 55, 560 N.Y.S.2d 307, 310 (2d Dep't 1990). "Merely because a case may have political overtones, involve political policy, or implicate some seemingly internal affairs of the executive or legislative branches does not, however, render the matter nonjusticiable." *Id.* (quoting *People v. Ohrenstein* 153 A.D.2d 342, 411, 549 N.Y.S.2d 962, 1004, (1st Dep't 1989)).

368. *Gruen*, 590 N.Y.S.2d at 219.

369. N.Y. CONST. art. I, § 11.

370. U.S. CONST. amend. XIV, § 1.

371. *Gruen*, 590 N.Y.S.2d at 219-20. *See also* *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 55 (1973); *Turner v. Fouche*, 396 U.S. 346, 363 (1963); *Margolis v. New York City Transit Auth.*, 157 A.D.2d 238, 240-41, 555 N.Y.S.2d 711, 713 (1st Dep't 1990); *Cooke v. Lawrence Sch. Dist.*, 140 A.D.2d 439, 440, 528 N.Y.S.2d 140, 142 (2d Dep't 1988).

tion treats similarly situated persons differently under the law.<sup>372</sup> Since the plaintiff alleged that the County's classification between the SAME members and other similarly situated employees was arbitrary,<sup>373</sup> the court affirmed the lower court's denial of defendant's motion to dismiss,<sup>374</sup> holding that the complaint adequately alleged a violation of plaintiff's equal protection rights.<sup>375</sup>

Therefore, it appears that the requirements for stating an equal protection claim under both the New York and United States Constitutions are identical.

---

372. *Gruen*, 590 N.Y.S.2d at 220; *See also San Antonio Sch. Dist.*, 411 U.S. at 1324; *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920), *Abrams v. Bronstein*, 33 N.Y.2d 488, 492, 310 N.E.2d 528, 530, 354 N.Y.S.2d 926, 929 (1974); *Cooke*, 140 A.D.2d at 440, 528 N.Y.S.2d at 142.

373. *Gruen*, 590 N.Y.S.2d at 220.

374. *Id.* at 218. The court noted that on a motion to dismiss the complaint for failure to state a cause of action, the complaint must be construed most favorable to the plaintiff, accepting all factual allegations as true, and regardless of whether the plaintiff will ultimately prevail on the merits. *Id.* at 219.

375. *Id.* at 219-20. The plaintiff also claimed that this resolution violated his due process rights under the federal constitution. *Id.* The court found that Suffolk County's resolution infringed upon the vested rights of SAME members because it summarily reduced their accrued sick time which they received upon termination of service. *Id.* at 219. Thus, the plaintiff "adequately sets forth a cause of action alleging [a] due process violation" because his vested rights constituted a property interest. *Id.* *See also Saxton v. Carey*, 61 A.D.2d 645, 648, 403 N.Y.S.2d 779, 782 (3d Dep't), *aff'd*, 44 N.Y.2d 545, 378 N.E.2d 95, 406 N.Y.S.2d 732 (1978) (holding that if a true constitutional issue is involved where the relief requested requires interference with the legislative process, adjudication is not improper as a matter of separation of powers); *Christian v. County of Ontario*, 92 Misc. 2d 51, 53, 399 N.Y.S.2d 379, 381 (Sup. Ct. Ontario County 1977) ("A right is a property right within the meaning of the 5th and 14th amendment[s] to the United States Constitution when it is a vested right.").